

MEMORANDUM

To: Jennifer Bruner, Legal Counsel, Indiana State Department of Health
Brad S. Gavin, Legal Counsel, Indiana Department of Homeland Security
Frances Kelly, Executive Director, Indiana Professional Licensing Agency
Barb McNutt, Chief Counsel, Indiana Professional Licensing Agency
Del Fanning, Board President, Indiana Board of Pharmacy
Donna Wall, Board Member, Indiana Board of Pharmacy

From: Marty Allain, Board Director, Indiana Board of Pharmacy

CC: Kristen Kelley, Board Director, Indiana Medical Board
Sean Gorman, Board Director, Indiana Nursing Board

Date: April 29, 2009

**Re: Memorandum regarding the distribution and dispensing of stockpiled
antiviral medications by Indiana local health departments**

This memorandum serves to instruct Indiana local health departments on the proper method to dispense stockpiled antiviral medications under circumstances where an emergency is not declared by the Governor under I.C. 10-14-3-12 or by the President of the United States.¹

A prescription or drug order is required for the dispensing of antiviral medications. The following are instructions for the dispensing of any legend drug including antiviral medications.

All methods of dispensing that are described herein are legal examples of proper dispensing in Indiana for any legend drug including antiviral medications. This Memorandum does not serve as guidelines for dispensing when an emergency is declared.

Any legend drug including antiviral medications in Indiana may be dispensed² by a (A) pharmacy/pharmacist or (B) practitioner:

¹ I.C. 25-26-13-32 allows the Indiana Board of Pharmacy to suspend provisions of a statute or rule that would prevent, hinder, or delay the appropriate delivery of pharmaceutical care when an emergency is declared under this article.

² I.C. 25-26-13-2 "Dispensing" means issuing one (1) or more doses of a drug in a suitable container with appropriate labeling for subsequent administration to or use by a patient.

- A. "Pharmacy" means any facility, department, or other place where prescriptions are filled and dispensed by a licensed pharmacist³;
- B. "Practitioner"⁴ may dispense⁵ in accordance with the Indiana Legend Drug Act which permits practitioner dispensing in the following circumstance: The legend drug is delivered by the practitioner in good faith in the course of practice and the immediate container in which the drug is delivered bears a label on which appears the following:
 - (A) The directions for use of the drug.
 - (B) The name and address of the practitioner.
 - (C) The name of the patient.

Methods for local health departments to distribute and dispense antiviral medications.

The following are four (4) examples of dispensing legend drugs including antiviral medications that may be used by local health departments. Each method is a legal example of how to dispense *any* legend drug including antiviral medications in Indiana irrespective of the circumstances. A local health department may choose any or all of these options to distribute stockpiled antiviral medications.

- 1. **Pharmacy/pharmacist** – Local health departments may distribute directly to pharmacies;
- 2. **Practitioner dispensing** – Local health departments may distribute directly to practitioner's offices. A practitioner may dispense legend drugs including antiviral medications in Indiana in accordance with I.C. 16-42-19-11(a)(2). *A practitioner may accept a prescription from another practitioner as a referral for treatment and dispense legend drugs including antiviral medications to the patient;*
- 3. **Local health department (practitioner dispensing)** – A clinic set up by local health department officials may dispense legend drugs including antiviral medications under practitioner dispensing. The Health Officer for the local health department will serve as the dispensing practitioner. The Health Officer may

³ I.C. 25-26-13-2.

⁴ IC 16-42-19-5 "Practitioner" defined

Sec. 5. As used in this chapter, "practitioner" means any of the following:

- (1) A licensed physician.
- (2) A veterinarian licensed to practice veterinary medicine in Indiana.
- (3) A dentist licensed to practice dentistry in Indiana.
- (4) A podiatrist licensed to practice podiatric medicine in Indiana.
- (5) An optometrist who is:
 - (A) licensed to practice optometry in Indiana; and
 - (B) certified under IC 25-26-3.
- (6) An advanced practice nurse who meets the requirements of IC 25-23-1-19.5.
- (7) A physician assistant licensed under IC 25-27.5 who is delegated prescriptive authority under IC 25-27.5-5-6.

⁵ I.C. 16-42-19-11(a)(2).

- accept a prescription from another practitioner as a referral for treatment and dispense legend drugs including antiviral medications to the patient;
4. **Any healthcare facility (practitioner dispensing)** – Local health departments may distribute directly to a hospital, healthcare clinic, or physician’s office which may dispense legend drugs including antiviral medications under practitioner dispensing. Note that a hospital may have a pharmacy license and, of course, may dispense as a pharmacy.

Labeling requirements. The dispensed drug may be labeled in accordance with either Indiana Code or U.S. Department of Health & Human Services Emergency Use Authorizations. Please refer to www.cdc.gov/swineflu for additional information.

This Memorandum is the legal interpretation of the current Indiana Board of Pharmacy and is expressed herein for the limited purpose of addressing the distribution and dispensing of antiviral medications by Indiana local health departments.